



The proposed amendment in paragraphs 2(1)(a) and (b) of the Fourth Schedule to the Income Tax Act No. 58 of 1962 (“the Act”), aims to remove the distinction between resident and non-resident employers. Therefore, this means that any employer (resident or foreign) will be required to deduct employees’ tax (PAYE), should the proposed amendments be promulgated into law.

If a non-resident company pays or is required to pay ‘remuneration’ to an employee in South Africa for services rendered, it is generally considered to be an employer within the meaning of ‘employer’ under the Fourth Schedule to the ITA. Currently, paragraphs 2(1)(a) and (b) of the Fourth Schedule to the Act, provides that the obligation to withhold employees’ tax and pay it over to the South African Revenue Service (“SARS”) is placed upon the “employer who is a resident” or a “representative employer in the case of any employer who is not a resident”.

Non-resident companies who employ local South African employees are, therefore, under no obligation to deduct and withhold employees’ tax unless remuneration is paid or is liable to be paid by a resident representative employer, meaning an “agent of such non-resident employer having authority to pay remuneration”. Therefore, in such cases the employee is responsible for paying their taxes by way of the provisional tax system.

Some of the public comments on the 2023 draft TALAB are that the proposed changes will add an administration burden on non-resident employers, which will include the employer’s registration with the Companies and Intellectual Property Commission (CIPC), as well as the opening of a local bank account, both of which may not be feasible or possible for a non-resident employer.

In response to public comments, National Treasury has provided some relief and proposed that the obligation to register as an employer will only fall on those non-resident employers that have a permanent establishment in South Africa. This will alleviate the administrative burden on non-resident employers in general and limit the obligation to non-resident employers that have business activities in South Africa.

Therefore, the proposed changes will relieve non-resident employers with no business activity or presence in South Africa from withholding employees’ tax. It is, therefore, very important to ensure that an analysis of the specific facts is conducted to ascertain whether there are any potential risks of creating a permanent establishment in South Africa. You are more than welcome to contact our team for assistance with employer tax obligations in South Africa, at tax.info@sng.gt.com



Nokukhanya Madilonga
Senior Manager
Employees’ Tax and Global Mobility



Laurence Mbokwane
Senior Tax Consultant
Employees’ Tax and Global Mobility